Bail Slip

The Petitioner/Accused namely Nagarajan is released on Bail in and by the order of this Court dated 11.12.2000 and made in Crl. M.P.No.8373/2000 in Crl.Appeal NO.1049/2000.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15-9-2005

CORAM

THE HONOURABLE MR.JUSTICE N.DHINAKAR

AND

THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM

C.A.No.1049 of 2000

Nagarajan .. Appellant

vs

The State. Rep. By
The Inspector of Police
Keezh Vellore Police Station
(Crime No.18 of 1999)
(SC No.134 of 2000) .. Respondent

Criminal appeal preferred under Sec.374 of the Code of Criminal Procedure against the judgment of the principal Sessions Judge, Nagapattinam, in S.C.No.134 of 2000 dated 5.8.2000.

For Appellant : Mr.R.Srinivas
For Respondent : Mr.V.Jayaprakash Narayanan
Government Advocate
(Criminal Side)

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JUDGMENT

(Judgment of the Court was delivered by M.CHOCKALINGAM, J.)

The sole accused, who stood charged, tried, found guilty as per the charge under Sec.302 of I.P.C. and awarded a life imprisonment by the Court of Principal Sessions Division, Nagapattinam, has brought forth this appeal.

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2. The short facts necessary for the disposal of this appeal

can be stated thus:

The deceased Sevagamoorthy, was the husband of P.W.1. P.W.2 is the daughter of P.W.1. They were all living on the South Street at Thevoor Village. The deceased never used to go for any work or earn, but used to come in a drunken mood and quarrel with the family members. While the matter stood thus, just 10 days prior to the date of incident, he beat P.Ws.1 and 2, and hence, they went out of the house and were living in the house of one Kalyani, which is situated opposite to their house. The matter was reported to the accused and one Vanchinathan. Both of them questioned the deceased about his conduct. In reply, the deceased informed them that it was exclusively their family affair in which they should not interfere. The accused got enraged over the words of the deceased.

3. On the date of occurrence namely 17.1.1999, at about 10.00 P.M., they had a quarrel. Following the same, the deceased came to the house, had food and was lying on the pial situated outside the house, while P.Ws.1 and 2 were inside the house. At that time, the accused came there and called the deceased that he has got something to talk about. So saying, he took the deceased. When they were just crossing the house of one Marimuthu, they had a quarrel. Following the same, the accused took M.O.1, a wooden-log, and attacked the deceased on his head 4 or 5 times. When the deceased was taken by the accused, P.Ws.1 and 2 also followed them. They also witnessed the occurrence along with P.W.3. On hearing the cry of P.Ws.1 and 2, the neighbours gathered, and immediately, the accused fled away from the place of occurrence.

4. At that time, P.W.1 could not get any conveyance to go to the Police Station, and she got into a lorry and reached Keezh Vellure Police Station at 5.00 A.M. on 18.1.1999, where P.W.5, the Head Constable, was on duty. She gave a report, Ex.P1, to P.W.5, on the strength of which a case came to be registered in Crime No.18/99 under Sec.302 of I.P.C. Printed First Information Report, Ex.P4, was despatched to Court.

5. P.W.8, the Inspector of Police, on receipt of the copy of the printed First Information Report, took up investigation in the case and proceeded to the spot. At the scene of occurrence, he caused the dead body and the place of occurrence to be photographed. The photographs and its negatives were marked as M.Os.6 series and M.O.7 series respectively. An observation mahazar, Ex.P8, was prepared by the Investigating Officer in the presence of two witnesses. A rough sketch, Ex.P9, was also prepared by him. A wooden log, M.O.1, a pair of chappels, M.O.2, pieces of broken bones, M.O.5, bloodstained earth, M.O.6, and sample earth, M.O.7, were recovered by him under a mahazar, Ex.P10. The Investigating Officer conducted inquest on the dead body of Sevagamoorthy in the presence of witnesses and panchayatdars and prepared Ex.P11, the inquest report. Following the same, the dead body was sent to the Government Hospital, Nagapattinam, along with a requisition for conduct of autopsy.

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6. On receipt of the dead body along with the requisition, P.W.7, the Civil Assistant Surgeon, attached to the Government Hospital, Nagapattinam, conducted autopsy on the dead body of Sevagamoorthy, and he found the following injuries.

> "1. A lacerated wound seen on the left fronto temporal region of the forehead starting from the left medial end of the eye brow 5 cm above and 3 cm in front of the left ear about the size of 8 x 5 x 9 cm going backwards defect with soft tissue depth in norrwowed brain matter exposed. 5 cm of lower end of the wound from hanging. On exploration shattered fracture chips of frontal and temporal bones and base of the skull were seen shattered fracture involving the left anterior cranial fossa middle cranial fossa left petrous part of the temporal bone and left post cranial fossa similar fracture seen on the right anterior cranial fossa middle cranial fossa and right petrous part of the temporal bone and right posterior of cranial fossa were seen fractured involving the left parietal region to the Rt. perito occipital suture line subdural haemotoma seen all over the brain. Membranes were absent depth to the wound with its, brain matters on the left frontal lobe region.
>
> 1. Eyeball is protruded.
> 2. Subconjanctival haemorrhage seen lateral side of lacerated wound from the left end of the eyebrow to left zygome 5 x 2 x 1 cm surrounding is black in colour.
> 3. (Contuse) swelling on the right perito temporal region 6 x 4 cm on exploration contused haemotoma seen."

The Doctor issued Ex.P5, the postmortem certificate, wherein he has opined that the deceased would appear to have died 14 to 18 hours prior to postmortem due to fatal head injury leading to shock.

7. Pending the investigation, on 19.1.1999 at Noon, the accused was arrested by the Investigating Officer. He volunteered to give a confessional statement. The same was recorded. Ex.P2 is the admissible part of the said statement. Pursuant to the same, he produced M.Os.3 and 4, a dothi and a shirt respectively. They were also recovered under a mahazar, Ex.P3. All the material objects recovered from the place of occurrence, from the dead body and from the accused on confession, were subjected to chemical analysis, pursuant to a requisition given by the Investigating Officer. The Chemical Analyst's report, Ex.P14, and the Serologist's report, Ex.P15, were received by the committal Court. On completion of investigation, the final report was filed by the Investigating Officer.

8. The case was committed to Court of Sessions, and necessary charge was framed against the appellant/accused.

9. In order to substantiate the charge levelled against the appellant/accused, 8 witnesses were marched, and 15 exhibits and 10 material objects were marked on the side of the prosecution.

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On completion of evidence on the side of the prosecution, the appellant/accused was questioned under Sec.313 of the Code of Criminal Procedure as to the incriminating circumstances found in the evidence of the prosecution witnesses, which he flatly denied as false. No defence witnesses were examined. The trial Court heard the arguments advanced by both sides, and found the appellant/accused guilty as per the charge and awarded the life imprisonment, which is the subject matter of appeal before this Court.

10. The learned Counsel Mr.R.Srinivas, while advancing his arguments on behalf of the appellant, made the following submissions, which according to him, would be suffice to reject the prosecution case.

(i) The occurrence has taken place on 17.1.1999 at 9.00 P.M.; but the complaint was given on 18.1.1999 at 5.00 A.M. There was no explanation from the prosecution, which was fatal to the prosecution case.

(ii) Apart from the above, while the case was registered at about 5.00 A.M. the next day, the F.I.R. has reached the Court at about 10.00 A.M., and thus, there was a delay in F.I.R. reaching the Court.

(iii) P.Ws.1 to 3 were examined as eyewitnesses. Their evidence was thoroughly discrepant. From the evidence of P.W.3, it would be quite clear that P.Ws.1 and 2 could not have seen the occurrence at all.

(iv) In the instant case, the Village Administrative Officer of the particular place was available at that time. If to be so, there was no necessity for P.W.1 to go to the Police Station the next morning.

11. Added further, the learned Counsel that even assuming the facts of the prosecution case were proved, the act of the accused would not fall within the ambit of murder, since from the evidence of P.W.1, it would be quite evident that there was a quarrel between the deceased and the appellant, and at that time, the deceased also uttered the filthy words; that due to sudden provocation, the accused should have acted so, and hence, it would not fall within the ambit of murder; but, it would be of culpable homicide not amounting to murder, and the same has got to be considered by this Court.

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12. The Court heard the learned Government Advocate (Criminal Side) on the above contentions.

13. The Court paid its anxious consideration to the submissions made, and also made a thorough scrutiny of the materials available.

14. In the instant case, the fact that one Sevagamoorthy died instantaneously due to the head injuries and the shock thereto is not in dispute. In order to substantiate the same, the prosecution has not only relied on the ocular testimony, but also the medical evidence adduced through P.W.7, the Doctor, who

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conducted autopsy on the dead body and who has given the postmortem certificate, wherein he has opined that Sevagamoorthy died due to fatal head injury leading to shock. It is also not a fact disputed by the appellant either before the Court below or before this Court. Hence, it can be recorded that the prosecution is successful enough in proving the said fact that Sevagamoorthy died on account of homicidal violence.

15. In order to substantiate the nexus of the crime with the accused, the prosecution has marched three witnesses namely P.Ws.1 to 3. If their evidence is carefully scrutinized, it would clearly reveal that all the three witnesses have seen the occurrence. According to P.Ws.1 and 2, they were actually inside the house at the time of occurrence, and it was the accused, who came to the house of P.W.1, took the deceased, and they also followed them, and when the accused and the deceased went near the house of one Marimuthu, it was the accused, who took a wooden-log, M.O.1, and attacked him on the head, 4 or 5 times, due to which Sevagamoorthy died instantaneously. The occurrence was also witnessed by P.W.3. The evidence of P.Ws.1 to 3 stood the test of careful scrutiny, and thus, the lower Court was perfectly correct in accepting their evidence. It remains to be stated that the medical evidence stood in full corroboration of the ocular testimony.

16. The Court is unable to see any merit in the contentions put forth by the learned Counsel for the appellant. According to P.W.1, the occurrence has taken place at about 9.00 P.M., and she had no conveyance at that time, and it was night hours, and she was a womenfolk, and however, she got into a lorry, went to the Police Station and gave a complaint. Not only this explanation is spoken to by P.W.1, but also it is found in the first information given by her. Apart from that, while the case was registered at 5.00 A.M., the F.I.R. has reached the Court at 10.00 A.M. Under the circumstances, the contention put forth by the learned Counsel for the appellant that there was a delay in F.I.R. reaching the Court has got to be rejected. In the instant case, the evidence of three witnesses is quite natural and hence, it was to be believed, which has been properly done by the lower Court. Thus, the prosecution has brought forth necessary and sufficient evidence to accept the case of the prosecution that it was the appellant/accused who attacked the deceased with the wooden-log and caused his death instantaneously.

17. Coming to the question of the act of the accused, the Court has to necessarily agree with the learned Counsel for the appellant. In the instant case, it is true that there was a quarrel between the accused and the deceased just before the occurrence, and at the time of occurrence, the accused came to the house of P.W.1, though he remained unarmed. From the evidence, it would be quite clear that when the appellant took Sevagamoorthy, the deceased in the case, and when they went near the house of one Marimuthu, there was a wordy quarrel between them. According to P.W.1, the deceased uttered filthy words, due to which the accused

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got provoked suddenly, took M.O.1, a wooden-log, which was aside, and attacked him immediately. In such circumstances, the act of the accused was only due to the sudden provocation on the filthy words uttered by the deceased. Hence, this Court is of the considered opinion that the act of the accused would not certainly fall within the ambit of murder, but would fall within Exception 1 to Sec.300 of I.P.C. since he has acted so due to sudden provocation. But, at the same time, he should have got knowledge that it is likely to cause the death of the other party. Therefore, this Court is of the view that the act of the accused would attract the provisions of Sec.304 (Part II) of I.P.C., and awarding punishment of 5 years Rigorous Imprisonment would meet the ends of justice.

18. In view of the reasons stated above, the judgment of the lower Court finding the appellant/accused guilty under Sec.302 of I.P.C. and awarding life imprisonment, is set aside, and in its place, the appellant is found guilty under Sec.304 (Part II) of I.P.C., and a punishment of 5 years Rigorous Imprisonment is awarded for the same.

19. In the result, with the above modification in conviction and sentence, this criminal appeal is dismissed. It is reported that the appellant is on bail. Hence, the Sessions Judge shall take steps to commit him to prison to undergo the remaining period of sentence imposed upon him.

Nsv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1)The Principal Sessions Judge, Nagapattinam.
2)The Judicial Magistrate, Nagapattinam.
3)-Do- Through The Chief Judicial Magistrate, Nagapattinam.
4)The District Collector, Nagapattinam.
5)The Director General of Police, Chennai.
6)The Public Prosecutor, Madras.
7)The Superintendent, Central Prison, Tiruchirapalli.
8)The Inspector of Police, Keezh Vellore Police Station
(Crime No.18 of 1999)

1 cc To Mr.R.Sinivas, Advocate SR 38721.

NTK(CO)
RVL 20.09



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